

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

RENEE L. McCRAY :
Plaintiff :
v. : Case 1:13-cv-01518 GLR
FEDERAL HOME LOAN MORTGAGE :
CORPORATION, et al :
Defendants :

**SAMUEL I WHITE AND SUBSTITUTE TRUSTEES MOTION TO DISMISS THE
AMENDED COMPLAINT**

Comes now Robert H. Hillman and Daniel J. Pesachowitz, attorneys for the Defendants, Samuel I. White, PC (“SIWPC”), John E. Driscoll, II, Robert E. Frazier, Jana M. Gantt, Laura D. Harris, Kimberly Lane, and Deena Reynolds (SIWPC and the individuals collectively hereinafter referred to as “the SIWPC Defendants”), and in support of their Motion to Dismiss pursuant to Fed. R. Civ. P (FRCP) Rule 12(b)(6)) and Rule 56, move to dismiss all claims, or in the alternative, for the entry of summary judgment with respect to all claims asserted in the Plaintiffs ‘Amended’ Complaint as to Counts I, II and III, as to the SIWPC Defendants, asserts the following:

1. In the instant matter, the SIWPC Defendants have been sued in the five (5) Amended Complaint which asserts violations of various federal and Maryland consumer protection statutes in the following causes of action have been brought against them individually for the following three (3) Counts:

- a. Count I—Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. §1692 et seq.
- b. Count II—Maryland Consumer Debt Collection Act (MCDCA), Md. Code Ann.

Com. Law §14-201

c. Count III—Maryland Consumer Protection Act (MCPA), Md. Code Ann. Com. Law §13-101, et seq.

2. That the “Amended” Complaint fails to recite any facts with specificity as to the notice of the alleged statutory violations of the Federal Fair Debt Collection Practices Act (the “FDCPA”) §§1692 et seq.; Maryland Consumer Debt Collection Act (MCDCA), Md. Code Ann. Com. Law §14-201; and the Maryland Consumer Protection Act (MCPA), Md. Code Ann. Com. Law §13-101, et seq., such that the Complaints fails to meet the minimum standards set forth by the Fed. R. Civ. P. 8(a)(2) for pleading.

3. That assuming arguendo, that the Court believes that the Plaintiff has met her minimum obligations in pleading a short and plain factual statement of the claim showing that the pleader is entitled to potential relief, the claim still fails to assert any cause of action upon which relief can be granted as the alleged violations are not material, that she has sustain no damages, and the SIWPC Defendants are not debt collectors under the present situation or are statutorily exempt from being sued in the capacities they have been sued. In all the allegations alleged to have occurred, the clear result is that there has not been any material violation of FDPCA, or the MCDCA, and if there has, it is a technical violation without any actual damages sustained by the Plaintiff. Indeed the Plaintiff has filed the action pro se would not entitled to attorney fees regardless.

4. The SIWPC Defendants are not subject to the Maryland Consumer Protection Act (MCPA) as they are acting solely pursuing the condemnation of the collateral posted as security for a refinance money loan in a State or Maryland foreclosure proceeding and are statutorily exempt.

5. For these reasons and those more fully set forth in the attached memorandum of points and authorities, the Court should consider that any re-pleading would be futile and the Court should grant summary judgment for the Defendant.

6. That these Defendants adopt the arguments and responses advanced by the other named Defendants filed in their Motion to Dismiss filed contemporaneously herewith, pray that it be read as part hereof and incorporated herein as though it was more fully recited herein.

7. For such other reasons as is set forth in the accompanying Memorandum in Support of the SIWPC Defendant's Motion to Dismiss.

WHEREFORE, the premises considered, the Defendant, Samuel I. White, PC, , John E. Driscoll, III, Robert E. Frazier, Jana M. Gantt, Laura D. Harris, Kimberly Lane and Deena L. Reynolds. prays for the following relief:

- a) That the Court grant its Motion to Dismiss without leave to amend or in the alternative for Summary Judgment.
- b) And for such other and further relief as the nature of this cause may require.

Respectfully Submitted:
Samuel I. White, PC

/s/ Robert H. Hillman

Robert H. Hillman, MD 06910

/s/ Daniel J. Pesachowitz

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P.C. and the SIWPC Individuals

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 1, 2013, I mailed, by first class mail, postage prepaid, a copy of the foregoing to: Renee L. McCray, 109 North Edgewood Street, Baltimore, MD 21229, Plaintiff; and electronically served Michael S. Barranco Esq, Treaner Pope and Hughes PA 500 York Road, Towson, Maryland 21204, for Defendants FHLMC, Wells Fargo Bank NA

/s/ Robert H. Hillman

Robert H. Hillman